



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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MEMORANDUM FOR DIRECTOR, FIELD OPERATIONS - EAST  
DIRECTOR, FIELD OPERATIONS - WEST  
DIRECTOR, APPEALS PROCESSING SERVICES  
DIRECTOR, TECHNICAL GUIDANCE

FROM: Diane S. Ryan /s/*Diane S. Ryan*  
Director, Director, Technical Services

SUBJECT: Interim Guidance Procedures on Disregarding a Collection  
Due Process or Equivalent Hearing Request under IRC 6330(g)<sup>1</sup>

This memorandum provides procedural changes to situations where:

- A taxpayer fails to list a reason for their dispute in their Collection Due Process (CDP) or Equivalent Hearing (EH) request,
- The taxpayer's arguments are solely frivolous, or solely reflect a desire to delay or impede the administration of federal tax laws, or
- The arguments are partially frivolous and/or partially reflect a desire to delay or impede the administration of federal tax laws.

Recent changes to IRC section 6320, Notice and Opportunity for Hearing upon Filing of Notice of Lien, and to IRC section 6330, Notice and Opportunity for Hearing before Levy, require the taxpayer provide a reason for the requested hearing. In addition, if the taxpayer provides a frivolous basis for requesting a hearing, that portion of the hearing request is treated as if the hearing request was not submitted.

A CDP or EH request lacking a reason for the requested hearing is considered a non-processable request. Collection will follow the procedures in their IRM which gives the taxpayer a reasonable period of time to "perfect" a non-processable request; in this case, to provide a reason for requesting the hearing. If the taxpayer fails to respond to Collection, Collection will disregard and not forward the non-processable request to Appeals.

<sup>1</sup> IRC section 6330(g) provides: "Notwithstanding any other provisions of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review." The requirements of section 6702(b)(2)(A) are met if a portion of the CDP hearing request (i) is based on a position which the Service has publicly identified as frivolous or (ii) reflects a desire to delay or impede the administration of the federal tax laws.

If the only reason given on the CDP or EH request appears to be frivolous or reflects a desire to delay or impede the administration of federal tax laws, Collection will forward the request to Appeals for a determination.

A request is deemed entirely frivolous if the sole reason for the request is based on a position identified as frivolous in [Notice 2008-14](#). A request is deemed to reflect only a desire to delay or impede federal tax administration when the request only makes frivolous arguments not listed in Notice 2008-14 or only makes moral, religious, political, constitutional, conscientious, or similar objections to the imposition or payment of federal taxes.

If in addition to a frivolous reason or a reason reflecting a desire to delay or impede the taxpayer provides a legitimate issue, such as hardship or innocent spouse claims, only a portion of the request may be disregarded. If any legitimate issue is raised, the request must be processed.

If the only reason(s) provided is frivolous or reflects a desire to delay or impede federal tax administration, Appeals will correspond with the taxpayer and allow the taxpayer 30 days to (1) amend the request to state a legitimate reason and to withdraw the frivolous or desire to delay reason, or (2) to withdraw the entire request. The taxpayer must amend or withdraw the request in writing.

Failure to withdraw the portion of the CDP or EH request that is frivolous or reflects a desire to delay or impede tax administration, or the entire hearing request, may result in Collection imposing a \$5,000 penalty against the taxpayer. IRC section 6702(b) provides for a penalty of \$5,000 if any portion of a request for a hearing under IRC section 6320 or IRC section 6330 is a position identified as frivolous by the IRS in Notice 2008-14 or reflects a desire to delay or impede the administration of federal tax laws.

Procedures attached to this memorandum are effective upon issuance and will be incorporated into Internal Revenue Manual (IRM) 8.22, Collection Due Process, within one year from the date of this memorandum. Please disseminate this information to processing and technical employees working CDP/EH cases and their managers.

If you have any questions, please contact Munir Ebeid, Director, Tax Policy and Procedure, or Janis Suchyta, CDP Program Analyst.

Attachment

cc: [www.irs.gov](http://www.irs.gov)

## Attachment

### Section 2: Procedures

1. The Tax Relief and Health Care Act (TRHCA) of 2006 amended IRC section 6320, Notice and Opportunity for Hearing upon Filing of Notice of Lien, and IRC section 6330, Notice and Opportunity for Hearing before Levy, to add the following:
  - a. Require the taxpayer to provide a reason for the requested CDP hearing.
  - b. Disregard hearing requests only stating a position or positions publicly identified by the IRS as frivolous ("specified frivolous position").
  - c. Disregard hearing requests only containing a statement or statements that reflect a desire to delay or impede the administration of federal tax laws.
2. Hearing requests made on or after January 14, 2008 contain a frivolous position if they state a position identified as frivolous in Notice 2008-14 (effective January 14, 2008). Hearing requests made from March 16, 2007 to January 13, 2008 contain a frivolous position if they state a position identified as frivolous in Notice 2007-30 (effective March 16, 2007).

Example: The taxpayer writes on Form 12153 that he is morally opposed to war and refuses to pay the portion of his taxes equal to the percentage of the federal budget being spent on the war effort. Notice 2008-14, section 1(h), identifies as a "frivolous position" a taxpayer's disagreement with the government's use of tax revenues or similar arguments described in Rev. Rul. 2005-20. This revenue ruling describes as frivolous the refusal to file returns or pay taxes based on moral, religious or ethical objections to the government programs or policies for which the taxes will be used. This includes the use of taxes to pay for military expenditures. Because this position is included in Notice 2008-14, it is a "specified frivolous position."
3. A hearing request contains a statement reflecting a desire to delay or impede the administration of federal tax laws if it contains one or more of the following attributes:
  - a. A reason that is not a "specified frivolous position," but is a frivolous reason reflecting a desire to delay or impede federal tax administration.
  - b. A reason that is not a "specified frivolous position" but is a moral, religious, political, constitutional, conscientious, or similar objection to the imposition or payment of federal taxes.

Note: With the exception of a legitimate, unsettled constitutional question, these objections always reflect a desire to delay or impede the administration of federal tax laws.

Example: The taxpayer writes on Form 12153 that he is not required to pay federal income taxes because the Oklahoma Constitution exempts the taxpayer from having to pay federal taxes. This position is not a "specified frivolous position" because it is not listed in Notice 2008-14. However, the position is nonetheless frivolous and it shows a desire to delay or impede federal tax administration.

Example: The taxpayer writes on Form 12153 that the interest he earned on unregistered publicly offered, long-term bonds issued by a state government is exempt from federal income tax by the 10<sup>th</sup> Amendment to the Constitution. The U.S. Supreme Court in South Carolina v. Baker, 485 U.S. 505 (1988) held that it is not unconstitutional for Congress to tax such interest. This is not a “specified frivolous position” listed in Notice 2008-14. However, it is well-settled law that such interest is taxable and as a result, this position demonstrates the taxpayer’s desire to impede the administration of taxes.

Note: In a situation such as this, please make sure the taxpayer is aware of the Supreme Court decision before disregarding the position or hearing request.

4. If hearing request contains both a frivolous/desire-to-delay issue and a legitimate issue (known as a “hybrid” request), Appeals will disregard the frivolous/desire-to-delay portion of the hearing request. However, the entire request cannot be disregarded because of the presence of a legitimate issue.

Example: The taxpayer disputes the appropriateness of a frivolous return penalty, claiming there was no managerial review, as well as challenging the constitutionality of paying taxes. The penalty challenge is legitimate and requires Appeals to review the underlying “frivolous” document that prompted the penalty. The hearing will only involve the accuracy of the frivolous return penalty; the “constitutionality” issue will be disregarded.

5. Taxpayers first send their CDP or EH requests to Collection:
  - a. When the taxpayer fails to state the reason for a dispute, which includes failing to “check” a box on Form 12153, Collection will attempt to “perfect” the request by sending the taxpayer (or their authorized representative) a letter asking him/her to state their disagreement with the CDP Lien and/or Levy notice.
  - b. If the taxpayer (or their authorized representative) fails to respond within the 15 days provided to perfect, the hearing request will be considered non-processable and will not be forwarded to Appeals.
  - c. If the taxpayer responds with either a frivolous or non-frivolous request, Collection will forward the request to Appeals.
  - d. Appeals will return as a Premature Referral request that fails to state a reason for the dispute.
6. Collection (both ACS and SBSE), following their IRM procedures, will develop the case and, without delay, will forward to Appeals:
  - a. Requests containing only “specified frivolous positions,”
  - b. Requests containing only statements that reflect a desire to delay or impede the administration of federal tax laws, and
  - c. Hybrid requests (a combination of frivolous and legitimate requests).

7. Within 30 days of assignment to the hearing officer of a request containing **only** specified frivolous positions or only reflecting a desire to delay, send the taxpayer Letter 4380. Letter 4380 allows the taxpayer 30 days to:

- a. Amend the request to state a legitimate reason *and* withdraw the frivolous reason or reason reflecting a desire to delay or impede federal tax administration, or
- b. Withdraw the frivolous/desire-to-delay hearing request,

Note: Due to the seriousness of disregarding hearing requests, frivolous hearing requests or requests that reflect a desire to delay or impede should be assigned and worked by employees able to recognize "specified frivolous positions" or requests made with a desire to delay or impede.

- c. Prepare a separate Letter 4380 for each taxpayer if the hearing request is signed by both joint taxpayers. This is required even if the taxpayers are living at the same address.
- d. Add feature code "FV" to all cases that include a specified frivolous position or reflect a desire to delay; also add feature code "FV" to hybrid requests.

8. Document any discussion with the taxpayer about withdrawal of the frivolous or desire-to-delay position, or withdrawal of the entire hearing request.

9. If, after sending Letter 4380, the taxpayer responds with a legitimate reason, within 15 calendar days, send the appropriate Substantive Contact Letter:

- a. Use L3855 if the taxpayer also withdraws the frivolous or desire-to-delay position.
- b. Use L3846 if the taxpayer provides a legitimate issue but fails to withdraw the frivolous or desire-to-delay position.

10. If, after sending Letter 4380, the taxpayer either fails to respond within 30 days or responds with a frivolous or desire-to-delay statement, take the following closing actions:

- a. Prepare Letter 4381. This letter informs the taxpayer that Appeals is disregarding the CDP or EH hearing. This letter can be signed by the hearing officer.

Exception: Letter 4381 must be signed by the ATM if the "disregard" decision is made by an Appeals Account Resolution Specialist (AARS).

- b. Prepare CDP Customized 5402. Use closing code 13 (new closing code indicating "disregarded" hearing request).
- c. With the selection of closing code 13, the following verbiage will populate the "Special Features, Remarks, and/or Appeals Case Memorandum:" section of the CDP 5402:

*"Taxpayer's CDP or EH hearing request is based on a specified frivolous position identified by the IRS in Notice 2008-14 or intends to delay or impede the hearing process."*

11. Hybrid Request is defined as a hearing request that contains either a "specified frivolous position" or an issue that reflects a desire to delay or impede the administration of federal tax laws **as well as** legitimate issues. Use Substantive Contact Letter 3846 to schedule a conference to discuss the legitimate issues. This letter will serve two purposes:
- a. Schedule a conference via telephone.
  - b. Solicit a withdrawal of the "specified frivolous position" or position determined to reflect a desire to delay or impede federal tax administration.
12. If during the conference scheduled to address the legitimate issues of a hybrid request, the taxpayer does not want to discuss the legitimate issues and only pursues the frivolous or desire-to-delay arguments, warn the taxpayer that the conference will be discontinued. If the taxpayer continues to espouse frivolous or desire-to-delay arguments, discontinue the conference.
13. Document any discussion with the taxpayer about withdrawal of the frivolous or desire-to-delay position.
14. Following established procedures, issue a Notice of Determination or Decision Letter and specifically respond to **only** the legitimate issue(s). If the taxpayer did not withdraw the frivolous or desire-to-delay issue, include a statement that the taxpayer also raised arguments considered frivolous by the courts or positions that reflected a desire to delay or impede the administration of federal tax laws. Do not directly quote the frivolous or desire-to-delay arguments.
- Note: The standard CDP or EH closing codes apply when issuing either a Notice of Determination or Decision Letter. Closing code 13 would not apply.
15. Collection is responsible for recommending assessment of the IRC section 6702(b) penalty. Collection may impose a \$5,000 penalty against each taxpayer making a frivolous or desire-to-delay argument in their request and fails to withdraw the reason or the entire CDP hearing request in writing. Collection may also recommend assessment of the IRC section 6702(b) penalty against taxpayers who submit hybrid requests and fail to withdraw the frivolous/desire-to-delay position.
16. When the taxpayer fails to withdraw a frivolous or desire-to-delay position, whether in a disregarded hearing request or a hybrid request, Collection will need the following documents to recommend the imposition of the IRC section 6702(b) penalty. Appeals **must** provide Collection with the following documents:
- a. A copy of the taxpayer's frivolous CDP/EH hearing request.
  - b. A copy of Letter 4380 or L3846, the letter Appeals issued soliciting a withdrawal of taxpayer's "specified frivolous position" or desire-to-delay position.

Note: Include a copy of L3846 in addition to the L4380 if the taxpayer in response to L4380 provided a legitimate reason but failed to withdraw the frivolous or desire-to-delay position.

- c. A copy of the Notice of Determination or Decision Letter (for cases where the taxpayer makes a hybrid request).
- d. Copy of case history notes documenting discussions with the taxpayer about withdrawal of the frivolous or desire-to-delay positions, or withdrawal of the entire hearing request.
- e. Copy of any written communications received from the taxpayer as a result of the withdrawal solicitation in either L4380 or L3846.

17. The taxpayer may request an EH at a later date. The taxpayer will be eligible for an EH if:

- a. The EH is made within the one-year period after a CDP Levy Notice was issued or, if the hearing is under section 6320, the one-year period commencing the day after the end of the 5-business-day period following the filing of the NFTL, and
- b. The taxpayer provides a legitimate issue.

Appeals Processing Section (APS) procedures:

Card-in procedures:

- 1. APS will card-in following established procedures in IRM 8.22.1.
- 2. APS will forward the case to the ATM for assignment.

Closing procedures:

- 1. APS will follow established procedures for issuing a Notice of Determination or a Decision Letter.
- 2. "Disregard" Letter 4381 will be sent by first class mail.
- 3. Send one joint letter if the hearing request is signed by both joint taxpayers, if both taxpayers are living at the same address, send one letter.
- 4. Send separate letters if the joint taxpayers are not living at the same address. Send Letter 4381 to both addresses.
- 5. Verify addresses using ENMOD, SPARQ or INOLES.

Note: Hearing officers, with the exception of Appeals Account Resolution Specialists, are authorized to sign "Disregard" Letter 4381. ATM's must sign Letter 4381 if an AARS made the disregard determination.

- 6. Send the appropriate copies of the letter to the authorized representative, as applicable.
- 7. Put a copy of the letter and all attachments in the administrative file.
- 8. Follow established procedures in closing the case on ACDS and CDPTS.

9. There is a new closing code, "13", for disregarded hearing requests. Input TC 522 cc 76 or cc 77 when a CDP/EH case is closed with closing code 13.
10. Return the entire case file to the field or ACS where the case is closed as "disregarded" (closing code 13). The case file must include:
  - a. The taxpayer's frivolous hearing request, and
  - b. All Appeals correspondence, including Appeals Letter 4380, Letter 3846, or Letter 4381.
11. Make a copy of all documents for a closed office file.
12. Retain a disregarded hearing request closed office file for two years.